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Jury Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 MATTHEW JONES,

4 Plaintiff,

5 v.

16 CV 8080 (JGK)

6 ADAM MUNOZ, MICHAEL VACCARO,
7 CHRISTOPHER TREIBUG and
8 UNDERCOVER OFFICER #349,

Defendants.

9 -----x

10 New York, N.Y.
11 May 245, 2018
12 9:00 a.m.

13 Before:

14 HON. JOHN G. KOELTL,

15 District Judge

16 APPEARANCES

17 ALEXIS PADILLA

18 Attorney for Plaintiff Jones

19 NEW YORK CITY LAW DEPARTMENT

20 Attorneys for Defendants Munoz/Vaccaro/Treibig/UC349

21 BY: MELANIE M. SPEIGHT

22 ASHLEY R. GARMAN
23
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1 (Case called)

2 THE COURT: Good morning, all.

3 All right. I'm giving you the opportunity to review.
4 I just want to indicate that I've given you the supplemental
5 brief jury charge asking the jurors to answer by a
6 preponderance of the evidence the following factual questions
7 and then substantially the three questions I were to ask the
8 jurors yesterday.

9 (Pause)

10 THE COURT: All right. Are the parties satisfied with
11 the supplemental jury charge and the supplemental verdict form?

12 MR. PADILLA: Your Honor, I object to these questions.
13 I feel that or it's plaintiff's position that these questions
14 are essentially asking the jury to make the qualified immunity
15 determination. The qualified immunity determination is for the
16 Court. It's not properly given to the jury but if the Court in
17 its wisdom feels that these questions are appropriate, I would
18 just ask that the language, even if mistakenly, be removed
19 because I think there's a substantial risk that the jurors
20 could be confused about what the questions are actually asking.
21 And I think that that's purposely that the defendants would
22 like for the jurors to be confused and to answer these
23 questions in such a way that would bolster qualified
24 immunity -- and fact that the jury clearly answered the
25 question of whether the force used against my client was

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1 reasonable.

2 I feel that in this case, your Honor, qualified
3 immunity is totally inappropriate. The question of
4 reasonableness is a question of fact, not a question of law for
5 the Court. The jury said that it was unreasonable when they
6 came back with their verdict. So that's just the plaintiff's
7 position, your Honor. Thank you.

8 THE COURT: Well, you know first of all, what you've
9 said is somewhat internally inconsistent. The law is clear
10 these days that qualified immunity is a question for the Court.
11 It's also clear that if there are issues of fact on which the
12 qualified immunity determination may turn, then those are
13 questions for the jury and not for the Court. It's not always
14 easy to determine what those factual questions are, but that's
15 the law as it's been given and so I follow it as best I can.

16 What you have said does contain a kernel of wisdom and
17 I raised it yesterday, but what you've said sort of triggers it
18 in my mind. There are actually two questions embedded in
19 Questions Two and Three and the answer "yes" or "no" doesn't
20 answer those questions. The first question is the factual
21 question of, for example, in Question Two, the factual question
22 of was a second taser cycle needed to gain control of the
23 plaintiff's arms? That's plainly a factual question and it
24 should be Question Number Two.

25 Question Number Three is: Did Lieutenant Treubig

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1 believe that a second taser cycle was needed to gain control of
2 the plaintiff's arms?

3 The advantage of breaking it down that way is those
4 are two factual questions and it leaves to the Court the
5 question of reasonableness.

6 MS. SPEIGHT: Makes sense. We have no problem with
7 that, your Honor. But we do maintain that the language needs
8 to be reasonable even if mistaken.

9 THE COURT: I know. But isn't that to be argued to
10 me?

11 MS. SPEIGHT: I'm missing something.

12 THE COURT: No. It's OK. And isn't ultimately the
13 question whether no reasonable police officer could have used
14 the force under those circumstances given all of the
15 circumstances? And that's not just a question with respect to
16 Lieutenant Treubig. It's a question -- and it's certainly not
17 an easy question for the plaintiff to overcome. And it's not a
18 question for the jury, whether no reasonable officer under the
19 circumstances could have believed that use of the taser was
20 reasonable, but that's certainly not something to be asked.

21 But the two factual questions it seems to me are, was
22 a second taser cycle needed to gain control and did Lieutenant
23 Treubig believe that a second taser cycle was needed? And the
24 second question might not actually be very relevant to
25 qualified immunity. But if you want me to ask while the jury

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1 is here, I might as well find out how they find as a fact with
2 respect to that issue.

3 MS. SPEIGHT: Then, would your Honor have the same
4 approach with respect to Question Three?

5 THE COURT: Yes. When Lieutenant Treubig used the
6 taser was the plaintiff resisting arrest? And then the next
7 question would be, Did Lieutenant Treubig believe that the
8 plaintiff was resisting arrest?

9 MS. SPEIGHT: We agree, your Honor.

10 THE COURT: Revise Questions Two and Three.

11 And with that, anything else?

12 MS. SPEIGHT: No, no objections to the charge.

13 THE COURT: And as I said yesterday, what I would do
14 is begin by polling the jury today with respect to their
15 verdict that they returned yesterday and then explain the
16 supplemental questions.

17 MS. SPEIGHT: Thank you, your Honor.

18 (Recess)

19 THE COURT: All right. Please be seated.

20 I've made the changes. We've passed out to you the
21 supplemental jury charge and the supplemental verdict form.
22 And just to point out what we changed on the supplemental jury
23 charge, we now say, "There are now seven such additional
24 questions, rather than three".

25 MR. PADILLA: May I, your Honor?

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1 THE COURT: Yes.

2 MR. PADILLA: Your Honor, I'm sorry. Before I say
3 anything let me read over the questions.

4 (Pause)

5 MR. PADILLA: Your Honor, just for the record, I would
6 like to object to all of these questions and to these questions
7 being submitted to the jury. And I would cite to Barksdale v.
8 Colavita. That's 506 Fed APX 8285, Second Circuit 2012. And
9 also to Alla v. Verky. It's 979 F. Supp. 2d 349, 370. And I
10 cite those cases for the proposition that only questions of
11 factual determinations are appropriate for special
12 interrogatory. I believe that these questions, particularly,
13 those that ask the jury to assess what the defendant believed
14 are not actually factual questions. I believe that those
15 questions are subjective and subjective questions of that
16 nature are not appropriate as supplementary interrogatories or
17 special interrogatories.

18 So for the record, I would like to object to the jury
19 being given these questions.

20 Thank you.

21 THE COURT: OK. Were the cases that you cited to me
22 qualified immunity cases?

23 MR. PADILLA: Yes, they were, your Honor.

24 THE COURT: OK. Defendant.

25 MS. SPEIGHT: Well, I don't know if those cases

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1 specifically, but it sounds like they're just for the
2 proposition that factual issues should be resolved and that is
3 what these special interrogatories do. I believe this is the
4 same objection that has been raised so we believe that they're
5 appropriate. His belief is a question of fact.

6 THE COURT: The final verdict will have been secured
7 before the jury is asked these questions. If any of these
8 questions in fact are not a proper basis to consider for
9 purposes of qualified immunity, then the parties can argue that
10 out to me and I will consider them. But it would be
11 unfortunate if there was any question appropriate for the jury
12 that didn't get asked and if there was any factual question
13 that remained open that would be useful for determining
14 qualified immunity. Otherwise, we would be left to speculate
15 about factual issues.

16 Now, it may be that the jury eventually cannot decide
17 unanimously on these factual issues, in which case we'll then
18 have to deal with the record as it is but at least we should
19 try. The Court of Appeals is clear that factual issues are for
20 the jury in determining qualified immunity. So then the
21 question is, should these or appropriate factual input into the
22 determination of qualified immunity? OK.

23 Anything else before we call in the jury?

24 MS. SPEIGHT: No, your Honor.

25 MR. PADILLA: No, your Honor.

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1 THE COURT: OK. Let's bring in the jury.

2 (Jury present)

3 THE COURT: All right. Please be seated, all.

4 Good morning, ladies and gentlemen. Good to see you
5 all.

6 When we left yesterday you had returned your verdict
7 and I said that I wouldn't poll you yesterday because there
8 were people who needed to leave and there were concerns about
9 children and the like. I deliberately put off polling the jury
10 on the verdict until this morning and I mentioned that after we
11 polled the yesterday there may be some additional questions.
12 But before we get to that, it's important to poll the jury with
13 respect to the verdict that you have returned.

14 So, Mr. Fletcher.

15 COURTROOM DEPUTY: Ladies and gentlemen of the jury,
16 listen to your verdict as it stands recorded.

17 Question One. Do you find that the plaintiff has
18 proved by a preponderance of the evidence that arresting the
19 plaintiff, any of the defendants violated the plaintiff's
20 rights by using excessive force as that term has been defined
21 for you in the Court's instruction?

22 "Vaccaro", your answer is "no".

23 "Munoz", your answer is "no".

24 "Treubig", your answer is "yes".

25 "UC 349", your answer is "no".

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1 Question Two: Do you find that the plaintiff has
2 proved by a preponderance of the evidence that the plaintiff is
3 entitled to compensatory damages as that term has been defined
4 for you in the Court's instructions?

5 Your answer is "no".

6 Question Three. What amount of nominal damages, not
7 to exceed one dollar, do you award the plaintiff on his
8 excessive force claim?

9 Your answer is "25 cents".

10 Question 4-A: Do you find that the plaintiff has
11 proven by a preponderance of the evidence that the plaintiff
12 should be awarded punitive damages against any of the following
13 defendants?

14 "Vaccaro", your answer is "no".

15 "Munoz", your answer is "no".

16 "Treubig", your answer is "yes".

17 "UC 349" your answer is "no".

18 Question 4B. What amount of punitive damages do you
19 find should be awarded against that defendant?

20 "Treubig", \$30,000.

21 This verdict form is dated May 23, 2018 and signed by
22 the foreperson, Carl Bongani Hart, and by the remaining jurors,
23 Julie Novalle, Albino Montiero, Ian Michael Campbell, Rosalinda
24 Sagles, Peggy Tanusukma, Jean Michael Simeon and Yolanda Odiot.

25 Mr. Hart, is that your verdict?

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1 FOREPERSON: Yes, it is.

2 COURTROOM DEPUTY: Ms. Novalle, is that your verdict?

3 THE JUROR: Yes.

4 COURTROOM DEPUTY: Mr. Montiero is that your verdict?

5 THE JUROR: Yes.

6 COURTROOM DEPUTY: Mr. Campbell, is that your verdict?

7 THE JUROR: Yes.

8 COURTROOM DEPUTY: Ms. Sagles, is that your verdict?

9 THE JUROR: Yes.

10 COURTROOM DEPUTY: Ms. Tanusukma, is that your
11 verdict?

12 THE JUROR: Yes.

13 COURTROOM DEPUTY: Mr. Simeon, is that your verdict?

14 THE JUROR: Yes. But my name is not correct. It's
15 "Jean Daniel".

16 COURTROOM DEPUTY: "Jean Daniel". Excuse me.

17 Let the record reflect, the juror's name is Jean
18 Daniel Simeon.

19 THE JUROR: Yes.

20 THE COURT: Is that your verdict?

21 THE JUROR: Yes.

22 COURTROOM DEPUTY: Ms. Odiot, is that your?

23 THE JUROR: Verdict. Yes.

24 COURTROOM DEPUTY: Let the record reflect the jury has
25 been polled and the verdict is unanimous.

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1 THE COURT: All right. Ladies and gentlemen, I always
2 show the verdict form then to the lawyers after the jurors have
3 been polled. I'm showing the special verdict form to the
4 lawyers.

5 (Continued on next page)

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1 (Side bar)

2 THE COURT: And there's a blank dash mark for
3 compensatory damages in 2B.

4 (Pause)

5 THE COURT: All right.

6 MR. PADILLA: Thank you.

7 (Continued on next page)

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1 (In Open Court)

2 THE COURT: Ladies and gentlemen, thank you for
3 returning to court this morning.

4 I mentioned before you began deliberations that after
5 you returned the special verdict form I may have certain
6 additional questions for you to answer about this case again,
7 principally by "yes" or "no" answers. There are now seven such
8 additional questions. Nothing about these questions asks you
9 to revisit the verdict you returned yesterday afternoon.
10 Indeed, I instruct you that the verdict you returned is final
11 and you should not attempt to revisit it or change it.

12 In an effort to assist you, your answers to these
13 additional questions will be contained on a supplemental form
14 to be completed by you in the jury room after you have begun
15 your deliberations. The questions will be answered by "yes" or
16 "no" answers. Your answer to each of these questions must be
17 unanimous and should be based on the facts you find by a
18 preponderance of the evidence.

19 I will distribute copies of the supplemental verdict
20 form now. Please do not make any notes on these copies. They
21 will be collected at the end of my instructions and I will then
22 give you the original supplemental verdict form which you will
23 complete in the course of your deliberations.

24 I will now review the questions on the supplemental
25 verdict form with you.

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1 Supplemental Question One. Did Lieutenant Treubig say
2 he would use the taser before he used it; yes or no?

3 Proceed to supplemental Question Two.

4 Supplemental Question Two. Was a second taser cycle
5 needed to gain control of the plaintiff's arms; yes or no?

6 Proceed to supplemental Question Three.

7 Supplemental Question Three. Did Lieutenant Treubig
8 believe a second taser cycle was needed to gain control of the
9 plaintiff's arms; yes or no?

10 Proceed to Supplemental Question Four.

11 Supplemental Question Four. Was the plaintiff
12 resisting arrest when Lieutenant Treubig used the taser the
13 first time; yes or no?

14 Proceed to Question Five.

15 Supplemental Question Five. Did Lieutenant Treubig
16 believe that the plaintiff was resisting arrest when Lieutenant
17 Treubig used the taser the first time; yes or no?

18 Proceed to Supplemental Question Six.

19 Supplemental Question Six. Was the plaintiff
20 resisting arrest when Lieutenant Treubig used the taser the
21 second time; yes or no?

22 Proceed to Supplemental Question Seven.

23 Supplemental Question Seven. Did Lieutenant Treubig
24 believe that the plaintiff was resisting arrest when Lieutenant
25 Treubig used the taser the second time; yes or no?

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1 Please proceed to sign the supplemental verdict form
2 and then the last page. The jury reached the above verdict
3 unanimously and then signature lines for the foreperson and
4 each of the other jurors and then date it, New York, New York.

5 When you answer the questions on the special verdict
6 form you are to answer them based on the facts that you find by
7 a preponderance of the evidence that has been presented to you.
8 Your answer to each question must be unanimous. After your
9 deliberations are complete and you have reached answers to
10 these seven questions, you will indicate your verdict on the
11 original supplemental verdict form which I will send with you
12 into the jury room.

13 As before, please leave the copies of the supplemental
14 verdict forms in the jury box when you leave to deliberate.
15 After your deliberations, the foreperson will sign the bottom
16 the original supplemental verdict form and then each of the
17 remaining jurors will sign the form also. I remind you that
18 your answer to each question must be unanimous. The foreperson
19 will then advise the marshal that a verdict has been returned.
20 The foreperson should keep the supplemental verdict form and
21 hand it up to the Court after you have returned to the
22 courtroom. It is important that you adhere strictly to the
23 instructions on the form. Please do not add anything that is
24 not called for by the supplemental verdict form.

25 Members of the jury, the marshal was sworn yesterday

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1 and is there to protect you during the course of your
2 deliberations and you may now retire to deliberate on the
3 supplement questions and we will shortly send you the
4 supplemental charge that I just read and the supplemental
5 verdict form.

6 All rise. And the jury should follow the marshal to
7 the jury room.

8 (deliberations pending supplement verdict)

9 THE COURT: Please be seated.

10 We have a supplemental verdict form and a supplemental
11 charge. I may have said "returned". "The foreperson will
12 advise the marshal that a verdict has been returned". Your
13 written copy says "reached".

14 Does anyone want me to change "reached" to "return"?

15 MR. PADILLA: No, your Honor.

16 MS. SPEIGHT: No, your Honor.

17 THE COURT: OK. Into the jury room we will send the
18 supplemental jury charge and the supplemental jury form.
19 Please inspect the supplemental jury charge and the
20 supplemental verdict form and confirm for us that you've done
21 that and then give them to Mr. Fletcher.

22 (Pause)

23 THE COURT: OK. You've inspected the supplemental
24 charge and supplemental verdict form and given them to
25 Mr. Fletcher?

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1 MR. PADILLA: Yes.

2 MS. SPEIGHT: Yes, your Honor, we have.

3 THE COURT: OK. Mr. Fletcher will now give them to
4 the marshal.

5 (Pause)

6 THE COURT: I've also signed letters for the jurors to
7 give to their employers indicating jury service on May 21, 22,
8 23 and 24. And the parties are welcome to inspect those
9 letters. Mr. Fletcher will give them to the jury later.

10 (Pause)

11 THE COURT: Anything further for me right now?

12 MS. SPEIGHT: No, your Honor.

13 MR. PADILLA: No, your Honor. Thank you.

14 THE COURT: OK. See you later.

15 (Recess)

16 THE COURT: Please be seated.

17 Mr. Fletcher advises that the marshal advises that the
18 jury indicates they have reached a verdict. Do the parties
19 want the jurors to put that in a note or shall we simply call
20 the jurors in?

21 MR. PADILLA: I think we should call them in, your
22 Honor.

23 MS. SPEIGHT: We'd also like to just call them in.

24 THE COURT: OK. Let's bring in the jury.

25 (Jury present)

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1 THE COURT: All right. Please be seated, all.

2 Mr. Foreperson, the marshal indicates that you have
3 reached a verdict on the supplemental questions.

4 Is that correct?

5 FOREPERSON: Yes.

6 THE COURT: Please hand it up to Mr. Fletcher.

7 (Pause)

8 COURTROOM DEPUTY: Mr. Foreperson, will you please
9 rise. And will the foreperson answer the supplemental
10 questions as put to him in the matter of Jones v. Munoz, et al.

11 Supplemental Question One. Did lieutenant Treubig say
12 he would use the taser before he used it?

13 FOREPERSON: Yes.

14 COURTROOM DEPUTY: Supplemental Question Two. Was the
15 second taser cycle needed to gain control of the plaintiff's
16 arms?

17 FOREPERSON: No.

18 COURTROOM DEPUTY: Supplemental Question Three. Did
19 Lieutenant Treubig believe that a second taser cycle was needed
20 to gain patrol of the plaintiff's arms?

21 FOREPERSON: Yes.

22 COURTROOM DEPUTY: Supplement Question Four. Was the
23 plaintiff resisting arrest when Lieutenant Treubig used the
24 taser the second time?

25 THE JUROR: No.

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1 MR. PADILLA: No. No.

2 THE COURT: No. "The first time".

3 COURTROOM DEPUTY: Excuse me. I'm sorry.

4 Was the plaintiff resisting arrest -- This is
5 Supplemental Question Four.

6 Was the plaintiff resisting arrest when Lieutenant
7 Treubig used the taser the first time?

8 THE JUROR: Yes.

9 COURTROOM DEPUTY: Supplemental Question Five. Did
10 Lieutenant Treubig believe that the plaintiff was resisting
11 arrest when Lieutenant Treubig used the taser the first time?

12 THE JUROR: Yes.

13 COURTROOM DEPUTY: Supplemental Question Six. Was
14 plaintiff resisting arrest when Lieutenant Treubig used the
15 taser the second time?

16 THE JUROR: No.

17 COURTROOM DEPUTY: Supplemental Question Seven. Did
18 Lieutenant Treubig believe that the plaintiff was resisting
19 arrest when Lieutenant Treubig used the taser the second time?

20 THE JUROR: Yes.

21 COURTROOM DEPUTY: Shall I poll the jury?

22 THE COURT: Poll the jury, please.

23 COURTROOM DEPUTY: Ladies and gentlemen of the jury,
24 listen to your verdict as it stands recorded.

25 Supplemental Question One: Did Lieutenant Treubig say

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1 he would use the taser before he used it? Your answer is
2 "yes".

3 Supplemental Question Two. Was a second taser cycle
4 needed to gain control of the plaintiff's arms? Your answer is
5 "no".

6 Supplemental Question Three. Did lieutenant Treubig
7 believe that a second taser cycle was needed to gain control of
8 the plaintiff's arms? Your answer is "yes".

9 Supplemental Question Four. Was the plaintiff
10 resisting arrest when Lieutenant Treubig used the taser the
11 first time? Your answer is "yes".

12 Supplemental Question Five. Did Lieutenant Treubig
13 believe that the plaintiff was resisting arrest when Lieutenant
14 Treubig used the taser the first time? Your answer is "yes".

15 Supplemental Question Six. Was the plaintiff
16 resisting arrest when Lieutenant Treubig used the taser the
17 second time? Your answer is "no".

18 Supplemental Question Seven. Did Lieutenant Treubig
19 believe that the plaintiff was resisting arrest when Lieutenant
20 Treubig used the taser the second time? Your answer is "yes".

21 The supplemental verdict form is dated May 24, 2018
22 and signed by the foreperson, Kevin Bongani Hart and by the
23 remaining jurors, Julie Novalle, Albina Monteiro Ian Michael
24 Campbell, Roslinda Sagles, Peggy Tanusukma, Jean Daniel Simeon
25 and Yolanda Odio.

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1 Mr. Hart, is that your verdict on the supplemental
2 form?

3 THE JUROR: Yes.

4 COURTROOM DEPUTY: Ms. Novalle, is that your verdict
5 on the supplemental form?

6 THE JUROR: Yes.

7 COURTROOM DEPUTY: Ms. Monteiro, is that your verdict
8 on the supplemental form?

9 THE JUROR: Yes.

10 COURTROOM DEPUTY: Mr. Campbell, is that your verdict
11 on the supplemental form?

12 THE JUROR: Yes.

13 COURTROOM DEPUTY: Mr. Sagles, is that your verdict on
14 the supplemental form?

15 THE JUROR: Yes.

16 COURTROOM DEPUTY: Ms. Tanusukma, is that verdict on
17 the supplemental form?

18 THE JUROR: Yes.

19 COURTROOM DEPUTY: Mr. Simeon, is that your verdict on
20 the supplemental form?

21 THE JUROR: Yes.

22 COURTROOM DEPUTY: Ms. Odiot, is that your verdict on
23 the supplemental form?

24 THE JUROR: Yes.

25 COURTROOM DEPUTY: The jurors have been polled on the

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1 supplemental verdict and the verdict is unanimous.

2 THE COURT: All right. Please show it to the
3 attorneys please.

4 (Continued on next page)

5 (Side bar)

6 THE COURT: I'm showing the supplemental verdict form
7 to the lawyers. Third page of the form, second set of
8 questions. OK?

9 MR. PADILLA: Thank you, your Honor.

10 THE COURT: And signed by all of the jurors.

11 MR. PADILLA: Thank you.

12 MS. SPEIGHT: Thank you.

13 THE COURT: Anything else before I discharged the
14 jurors?

15 MR. PADILLA: No, your Honor.

16 MS. SPEIGHT: No, your Honor.

17 THE COURT: Thank you.

18 (Continued on next page)

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1 (In Open Court)

2 THE COURT: Ladies and gentlemen of the jury, I said
3 earlier in the trial that you were a very good jury and you are
4 a very good jury. You have been prompt and efficient. Many
5 judges use this occasion when a jury has brought in its verdict
6 and is finished its deliberations to thank the jurors for their
7 deliberations and for their service. But many years ago I
8 clerked for a great judge of this court, not one of the ones
9 who have the paintings around the room but a truly great judge
10 of this court who made it a practice never to thank jurors
11 because he told jurors that what they had done was to perform
12 one of the highest and noblest obligations of citizenship.

13 They had acted as finders of fact. They had
14 participated in the administration of justice. They were
15 public servants. And for doing that, the jurors are entitled
16 to the deep personal satisfaction of knowing that they have
17 performed a public service. And that deep personal
18 satisfaction is far more important and lasting than the
19 ephemeral thanks of the Court and the parties.

20 So, having sat with you over these last few days which
21 were long days, having observed your conscientiousness, I
22 believe that all of you take away from this process that deep
23 personal satisfaction of knowing that you have performed a
24 public service and that gives me satisfaction.

25 There are just a few tasks left to me. First, I will

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1 discharge you as jurors in this case. You're no longer under
2 my instructions not to talk about the case, not to look at or
3 listen to anything to do with the case. You are free to talk
4 about the case. But I always urge jurors as a matter of
5 prudence and courtesy to all of your fellow jurors not to talk
6 about your deliberations.

7 The reason for that is I think it encourages
8 confidentiality and the exchange of views in the jury selection
9 process. So I urge jurors not to talk about their
10 deliberations but I also understand that you're no longer under
11 my orders and you are no longer under any of my strictures. I
12 just ask as a matter of prudence and courtesy that you not talk
13 about your deliberations but that is up to you.

14 All of the technical details will be taken care of by
15 mail. I can't assure you that the check is in the mail but it
16 soon will be. Mr. Fletcher will give you the letters for your
17 employers or anyone else who needs a letter indicating that you
18 have been a juror over these four days. He'll give those to
19 you before he leaves if he hasn't already done that. You don't
20 have to go back downstairs to the central jury room. As I said
21 everything will be taken care of through the mail.

22 And so there's a only one last task for me to do which
23 is to ask everyone in the courtroom to stand as a final sign of
24 respect to all of you.

25 All rise, please. And the jurors should now follow

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1 the marshal to the jury room.

2 (Jury discharged)

3 THE COURT: All right. Please be seated.

4 The defendants or at least one defendant at this point
5 had indicated a desire for post verdict motions and I raised
6 the question of where the motion with respect to qualified
7 immunity would fit into that process. I appreciate that
8 there's a, defendant had indicated a Rule 50 motion, a desire
9 to make a motion with respect to qualified immunity. What
10 would the parties like to do? Either side, of course, has the
11 opportunity to make motions, whatever motions there may be.

12 MS. SPEIGHT: We need to think about it, your Honor.

13 THE COURT: Did the plaintiff want to say something?

14 MR. PADILLA: Only that I move to judgment entered on
15 behalf of the plaintiff.

16 THE COURT: OK. The plaintiff wants me to enter
17 judgment. Of course it would be judgment in favor of three of
18 the defendants and for the plaintiff against one defendant and
19 then the question, the rules generally say that judgment should
20 be entered promptly after a verdict and then the motions tend
21 to be post judgment motions but I'll certainly -- that's what
22 the plaintiff is looking for, judgment in favor of the
23 plaintiff against one defendant and in favor of three
24 defendants against the plaintiff and I should enter the
25 judgment promptly.

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1 MR. PADILLA: That was the jury's verdict, your Honor.

2 THE COURT: OK.

3 MS. SPEIGHT: We would renew our Rule 50 application
4 actually to seek a grant of qualified immunity now, your Honor.
5 Based on the record and based on the preserved oral
6 application, we believe that it is warranted.

7 We thought at your suggestion last night about the
8 timing and we would like to resolve the question of qualified
9 immunity before making additional Rule 50 motion. So if your
10 Honor will not grant the application today and would like us to
11 do briefing, then we would like to do that before judgment is
12 entered and before we do additional post trial motions.

13 THE COURT: It would be useful to me to have both side
14 spell out what they want because my recollection of the rules
15 is that the motions to be made post verdict are the post
16 judgment motions, rather than for that period of time after
17 verdict before judgment. They're rather after judgment. But I
18 don't want to decide anything like that without at least having
19 the views of the parties and where the qualified immunity comes
20 in. OK?

21 MS. SPEIGHT: OK, your Honor.

22 THE COURT: So, could you send me letters by, promptly
23 like next Tuesday? I believe you're going to be out of town.

24 MS. SPEIGHT: I will. I won't be back until the 5th
25 but we can do that, your Honor.

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1 THE COURT: OK. There's another issue that should be
2 addressed and it's not for me. It's for all of you. And that
3 is the question of a settlement. You've now heard the jury
4 verdict and you've heard the supplemental questions, the
5 answers to the supplemental questions. It's perfectly clear
6 that if you don't resolve the case, the case will not be
7 resolved by me. I will come to a resolution as fast as I can
8 but I will not be the final word and it will only be after
9 considerably more effort and expense on your time before there
10 is a final decision, whatever way it is. So I simply set that
11 out for you. Meanwhile, I will decide whatever the motions are
12 that are before me.

13 OK. Anything else?

14 MR. PADILLA: No. Thank you, your Honor.

15 And thank you to everyone.

16 THE COURT: OK.

17 MS. SPEIGHT: Nothing else from us, your Honor.

18 Thank you.

19 THE COURT: Have a good day.

20 MR. PADILLA: Your Honor, I think there is one just
21 logistically --

22 Could you explain, sir?

23 THE MARSHAL: Yes. The writ has to be satisfied. We
24 have to get notification so that we could send the plaintiff
25 back to whatever facility he was supposed to go to and there is

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Jury Trial

1 no delay.

2 THE COURT: Yes. I'll satisfy the writ.

3 THE MARSHAL: Thank you, your Honor.

4 THE COURT: You can bring it later into chambers.

5 THE MARSHAL: Thank you, your Honor.

6 MR. PADILLA: Thank you, your Honor.

7 THE COURT: OK. We are adjourned.

8 (Adjourned)